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**Datasheet for the decision
of 10 March 2025**

Case Number: T 0352/23 - 3.3.08

Application Number: 17165392.6

Publication Number: 3219806

IPC: C12P19/04, C12P7/06

Language of the proceedings: EN

Title of invention:

Methods for degrading or converting plant cell wall
polysaccharides

Patent Proprietor:

Novozymes, Inc.

Opponent:

Clariant Produkte (Deutschland) GmbH

Headword:

Methods for converting plant cell wall polysaccharides/
NOVOZYMES

Relevant legal provisions:

EPC Art. 113(1), 113(2)

Keyword:

Right to be heard - violation (no)

Basis of decision - text or agreement to text withdrawn by
patent proprietor - patent revoked

Decisions cited:

T 0073/84, T 0186/84, T 0646/08, T 2434/18



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 0352/23 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 10 March 2025

Appellant: Clariant Produkte (Deutschland) GmbH
(Opponent) Brünningstrasse 50
65929 Frankfurt am Main (DE)

Representative: Clariant Produkte (Deutschland) GmbH
Patent Management
Industriepark Höchst, G 860
65926 Frankfurt am Main (DE)

Respondent: Novozymes, Inc.
(Patent Proprietor) 1445 Drew Avenue
Davis, CA 95616 (US)

Representative: Potter Clarkson
Chapel Quarter
Mount Street
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 20 December
2022 rejecting the opposition filed against
European patent No. 3219806 pursuant to Article
101(2) EPC**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: R. Morawetz
D. Rogers

Summary of Facts and Submissions

- I. The appeal lodged by the opponent (appellant) lies from the decision of the opposition division rejecting the opposition filed against European patent No. 3 219 806 ("the patent").
- II. The appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety. It also submitted that its right to be heard had been violated by the opposition division.
- III. The patent proprietor (respondent) initially requested that the appeal be dismissed and that the patent be maintained as granted (main request) or, alternatively, that the patent be maintained in amended form on the basis of auxiliary request 1.
- IV. The board scheduled oral proceedings as requested by the parties and subsequently issued a communication under Article 15(1) RPBA indicating, *inter alia*, that it considered the appellant's argument that its right to be heard had been violated to be unfounded.
- V. By letter dated 11 February 2025, the respondent stated that "*[t]he Patentee no longer approves the text of this Patent, and will not be submitting any amended text. For the avoidance of doubt, the Patentee requests that the Patent is revoked.*"
- VI. The board drew the parties' attention to outstanding issues in a further communication.
- VII. By letter dated 25 February 2025, the respondent confirmed "*(i) that it does not approve the text of the*

Patent, either as granted or in accordance with any request on file, and that it unequivocally withdraws all claim requests in the proceedings, and that it does not intend to file any further claim requests; and (ii) that it wishes to see the Patent revoked; and (iii) that it will not attend the scheduled oral proceedings."

VIII. By letter dated 5 March 2025, the appellant stated that they maintained their request to postpone the oral proceedings until the Enlarged Board of Appeal has answered the questions raised in G 1/24 and further that "... [o]nly in the event of a complete revocation of the patent in the written proceedings by the Board of Appeal, the Appellant will, however, not contribute further to the case, nor on the procedural violation."

IX. Oral proceedings were cancelled.

X. The arguments of the parties relevant for the decision are dealt with in detail in the reasons for the decision.

Reasons for the Decision

Decision taken in written proceedings

1. Where, as in the present case, oral proceedings are scheduled at the request of the parties, and one of the parties, i.e. the respondent, subsequently declares its intention not to attend (section VII. above), such a declaration is generally interpreted as a withdrawal of the request for oral proceedings (Case Law of the Boards of Appeal of the European Patent Office, 10th edition 2022, ("Case Law"), III.C.4.3.2).

2. The appellant's statement that "... [o]nly in the event of a complete revocation of the patent in the written proceedings by the Board of Appeal, the Appellant will, however, not contribute further to the case, nor on the procedural violation" (section VIII. above) can also only be interpreted as a conditional withdrawal of its request for oral proceedings and hence also of its request for postponement of the oral proceedings. Since the condition underlying the appellant's withdrawal of its request for oral proceedings is also met (see point 5. below), the present decision can be taken in written proceedings.

Approval of the text of the patent in any form withdrawn by the patent proprietor

3. Pursuant to the principle of party's disposition, as codified in Article 113(2) EPC, the European Patent Office shall examine, and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.
4. Since the text of a patent is at the disposition of the patent proprietor(s), their patent cannot be maintained against their will. In the case at hand the patent proprietor withdrew all pending claim requests and its approval of the text of the patent as granted (see sections V. and VII. above). Consequently, there is no longer any text of the patent in the proceedings which the board can consider for compliance with the requirements of the EPC, so that it is no longer possible to take a decision as to substance (see e.g. decisions T 186/84, OJ 1986, 79, Reasons 5; T 646/08, Reasons 4 and T 2434/18, Reasons 4).

5. It is established case law that in the present circumstances the decision under appeal must be set aside and the patent be revoked without further substantive examination as to patentability (see decision T 73/84, OJ EPO 1985, 241 and Case Law, III.B.3.3 and IV.D.2). The board has no reason to deviate from this consistent approach of the Boards of Appeal, with the consequence that the patent is to be revoked.

The alleged violation of the appellant's right to be heard by the opposition division.

6. The opposition division found that the claims of the granted patent were inventive when starting from document D3 or document D4 as the closest prior art (decision under appeal, Reasons 19.1 and 19.2). With respect to document D2, proposed as an alternative closest prior art by the appellant, it held that this document did not qualify as the closest prior art because it had less technical features in common with the opposed patent than documents D3 and D4 (ibid., Reasons 19.3).
7. The appellant submits that its right to be heard was violated during opposition proceedings because when it asked, during the oral proceedings, which feature of claim 1 of the opposed patent was considered not to be disclosed in document D2, the opposition division stated that this was the feature of expressing a heterologous beta-glucosidase. However, since the opposition division did not indicate that document D2 could not be considered as the closest prior art or that it had fewer features in common with the opposed patent than documents D3 or D4, the appellant was not

given the opportunity to address these concerns.

8. Article 113(1) EPC states that the decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments. It is generally accepted that "grounds or evidence" under Article 113(1) EPC are to be understood as meaning the essential legal and factual reasoning on which the decision is based (Case Law, III.B.2.3.2).
9. The board observes that it is well established in the case law of the Boards of Appeal that parties are not entitled to advance indications of all reasons for a decision in detail (Case Law, section III.B.2.3.1). Furthermore, it is also well established that "grounds or evidence" within the meaning of Article 113(1) EPC do not have to originate from the deciding body (ibid.). In opposition proceedings, it is therefore sufficient if another party raises the objection.
10. It can be derived from the evidence on file that the parties were heard on inventive step during oral proceedings (minutes, points 30 to 36; see also respondent's reply, points 10.87 and 10.88) and also that the respondent argued that document D2 *"is less appropriate for inventive step than D3 or D4 as no heterologous beta-glucosidase is present in the document"* (minutes, point 36).
11. The reasoning given in the decision under appeal in respect of document D2 (point 6. above) corresponds to the argument put forward at the oral proceedings by the respondent, and hence is based on "grounds or evidence" which were known to the appellant and on which it had the opportunity to comment during the oral proceedings

before the opposition division.

12. For these reasons, the appellant's arguments that its right to be heard was violated by the opposition division are not found persuasive.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



C. Rodríguez Rodríguez

T. Sommerfeld

Decision electronically authenticated